

Exhibit B

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 09-50026-reg

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5 In the Matter of:

6 MOTORS LIQUIDATION COMPANY, et al.,

7 f/k/a General Motors Corp., et al.

8

9 Debtors.

10 - - - - - x

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13 U.S. Bankruptcy Court

14 300 Quarropas Street

15 White Plains, New York

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18 February 17, 2015

19 9:02 AM

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21 B E F O R E :

22 HON ROBERT E. GERBER

23 U.S. BANKRUPTCY JUDGE

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25 ECRO: K. HARRIS

1 **Hearing re: Oral Argument on Motion to Enforce.**

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25 **Transcribed by: Sonya Ledanski Hyde**

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1 P R O C E E D I N G S

2 THE COURT: Good morning. Have seats, please.

3 Well, I know everybody who's likely to speak. So, let me
4 just get appearances of those who will be heard for the
5 transcript. And then I want you all to sit down, because
6 I'm going to have some preliminary comments.

7 MR. STEINBERG: Arthur Steinberg, from King &
8 Spalding, on behalf of New General Motors.

9 THE COURT: All right, Mr. Steinberg. Could
10 everybody hear me? I'm not sure if I have the same volume
11 in my mic that I normally do. Can you hear me, Mr. Flaxer?

12 MR. FLAXER: (indiscernible)

13 THE COURT: Okay. Thank you.

14 MR. WEISFELNER: Good morning, Judge. Edward
15 Weisfelner, Brown Rudnick, on behalf of the designated
16 counsel.

17 THE COURT: Thank you, Mr. Weisfelner.

18 MR. WEINTRAUB: So, good morning, your Honor.
19 William Weintraub with Goodwin Procter, also designated
20 counsel.

21 THE COURT: Right, Mr. Weintraub.

22 MS. RUBIN: Morning, your Honor. I'm Lisa Rubin
23 with Gibbs & Dunn on behalf of the GUC Trust.

24 THE COURT: Okay. She was kind of far from the
25 mic; that was Ms. Rubin introducing herself for the GUC

1 Trust. I got it this time, Ms. Rubin.

2 MS. NEWMAN: Good morning, your Honor. Deborah
3 Newman from Akin Gump on behalf of the participating note
4 holders.

5 THE COURT: All right, Ms. Newman.

6 MR. ESSERMAN: Good morning, your Honor. Sander
7 Esserman, Stutzman, Bromberg, Esserman & Plifka on behalf of
8 designated counsel.

9 THE COURT: All right. And I see Mr. Flaxer right
10 next to you, Mr. Esserman.

11 MR. FLAXER: Yes, your Honor, only to the extent
12 that we feel that it's necessary to speak for -- it could be
13 a minute or two would be it.

14 THE COURT: All right, very good. Thank you. All
15 right, folks. With one exception, I want you to make your
16 presentations as you see fit. But before you're done, I'd
17 like you to address a fair number of questions that had
18 occurred to me when I was reading the briefs. These
19 questions (indiscernible) one or another of you, or, in many
20 cases, both.

21 But first, the exception, mainly Mr. Weisfelner
22 and Mr. Weintraub: you folks spend many, many pages in your
23 briefs talking about the underlying failures of Old GM and
24 New GM to institute the necessary recalls on the cars and
25 the 24 or 25 people at Old GM who knew enough to justify

1 much, much larger recalls. I get it. But that's not what's
2 before me now.

3 I'm prepared to assume, for the purposes of this
4 controversy, unless Mr. Steinberg really wants to dispute
5 it, that there was enough to require a recall well before
6 June 2009, and that each of Old GM and New GM acted very
7 badly in connection with the delay. But I want to focus on
8 the legal issues. So, let's turn to them.

9 Starting with due process, Mr. Steinberg, one
10 would assume, I think, that a company's books and records,
11 if they're to determine whether a claim is known or unknown,
12 have to be much more broadly construed than in the financial
13 statement sense. And I take it that you're not arguing that
14 whether or not a creditor is known or unknown turns on
15 whether the company has booked the liability.

16 So, before you're done, I'd like you to tell me:
17 how would you articulate the standard? I wonder whether the
18 standard should be more than foreseeable but less than
19 probable. But I would like you to put forward your view as
20 to how I should construe that. It's debatable whether
21 potential liabilities associated with the ignition switches
22 were wholly (indiscernible) claims, even if Fritz Henderson
23 and Mary Barra didn't know about them.

24 But I take it you'll agree that Old GM knew enough
25 to send out recall notices back in 2009. Their people would

1 have known that there was something potentially wrong with
2 their cars. And those who weren't in wrecks could have
3 filed claims or objected, as they're doing now, at the time
4 of the 363 sale. If recall notices had been issued,
5 wouldn't the publication notice that was given then be more
6 justifiable?

7 Number two: by the same token, Mr. Weisfelner,
8 would you clarify your position on what notice should have
9 been given? I gather the parties have stipulated that there
10 were 70 million GM cars then on the road. I gather also
11 that there were approximately 27 million whose cars, we're
12 learning, later became the subject of pending recalls.

13 It'd be helpful if you would tell me how many of
14 those 27 million cars were then subject to announced recalls
15 and how many would have been subject to recalls if GM, which
16 was then Old GM, of course, had announced them as it should
17 have. Seemingly, the number would be very, very large.

18 Now, again, Mr. Weisfelner, is it your argument
19 that mailings should have gone out to each owner, each of
20 those 70 million, in the period between the June 1st, 2009,
21 filing of the bankruptcy and the June 30, 2009, date for the
22 start of the sale lien? Or, for that matter, the June 19
23 date, which was the deadline for objections in the 363 sale?
24 Or are you saying it should have gone out by mail only to
25 cars with the poorly designed ignition switches?

1 Both sides: what information do I have in the
2 record on how much it would cost to send out mailing notices
3 to all 70 million of the GM cars on the road at the time, or
4 even 27 million cars? And what information do I have in the
5 record on how much time it would take to send out 27 or 70
6 million notices?

7 Mr. Weisfelner, I made a factual finding back at
8 the hearing on the same issue, that the continued
9 availability of the financing Old GM was using to survive at
10 the time was conditioned on approval of the 363 sale motion
11 by July 10. And I also rejected an argument that was made
12 by bondholders at the time that the government's July 10
13 deadline was just posturing and that I should have argued --
14 I should have found back then, or assumed back then, that
15 the U.S. government cared so much about GM's survival that
16 the U.S. government would never let GM die.

17 Well, that seems to have a lot of similarities to
18 (indiscernible) you make now. On that, I know your clients
19 weren't present back then to argue to the contrary, but to
20 challenge -- or to challenge those findings. But others
21 did. Are you challenging those findings now? Do you think
22 there are some facts now to suggest that I should now find
23 that the government was posturing, while you'd rejected that
24 contention back in 2009?

25 I don't know if I'm going to hear from the GUC

1 Trust in the first phase of the arguments. But, at some
2 point, Ms. Rubin, when you do get the chance to be heard,
3 which you will sooner or later, I'd like you to help me with
4 this: the cost of administration of the Chapter 11 case,
5 which would at least seemingly include the cost of mailing,
6 would come directly out of the pockets of your folks, the
7 unsecured creditor constituency.

8 How do you think a judge should decide what's
9 reasonable in sending out notice of a 363 sale to a universe
10 of potential creditors when it comes out of the pockets of
11 those who you know are creditors for absolutely, positively
12 sure, like your bondholders, like your vendors in the supply
13 chain, and victims of car wrecks, people who were actually
14 in accidents who got injured or killed when cars didn't
15 perform the way they were supposed to?

16 Back to you, Mr. Weisfelner: what would the
17 notice have said, if GM were to do it right, and you say
18 that GM didn't do it right? As I think it was Judge
19 Bernstein said in Chrysler -- I think by then it had been
20 named New Car Co., or maybe Old Car Co., "Things can go
21 wrong with cars all the time. And, while design defects
22 that can cause a loss in cars' value don't happen all the
23 time, or all that often, I don't know if anybody could
24 really say they're infrequent." So, what do you think would
25 have been reasonable under the circumstances?

1 Both sides: is it appropriate to be making
2 distinctions, when we're talking about honoring claims --
3 and I'm offering you a view now as to whether there are --
4 these are unknown claims as a (indiscernible) or not --
5 between liquidating 11s and 11s where there is a surviving
6 entity, we all know that there's no discharge in a
7 liquidating 11. There is, of course, a discharge in the 11
8 where a company survives.

9 A lot, and maybe most, of the case law
10 (indiscernible) you rely on is in the context of expunging
11 claims, either because they're late or because they've been
12 discharged. But it's a lot easier to say that a claim isn't
13 discharged when we have a debtor that's surviving and you
14 can still go after that debtor by ignoring or blowing away
15 the order that protected the debtor upon the confirmation of
16 the case or otherwise.

17 Both sides: shouldn't we focus on the
18 distinctions between the notice that's appropriate in a 363
19 sale on the one hand and the notice that's required to give
20 parties a chance to file claims on the other? Or, to the
21 extent that it's different, the notice that needs to be
22 given before a judge discharges a creditor's claim? And
23 isn't it necessary or appropriate to take into account the
24 time exigencies inherent in many, perhaps most, 363 sales,
25 especially those, like most of them, where the debtor only

1 has the cash to survive for only days or weeks?

2 If reasonableness depends on the facts and
3 circumstances, as the Supreme Court said in (indiscernible),
4 wouldn't it be appropriate to take into account that, in the
5 363 context, you have to hold a hearing on a sale in four
6 weeks, because you're bleeding so badly that you can't
7 survive any longer?

8 Mr. Steinberg: you point out that New GM didn't
9 yet exist when notice was given, and that it was Old GM that
10 was responsible for the failure to give the creditor
11 community a notice. But does that matter? Or should a
12 judge simply focus on whether or not the creditor was given
13 appropriate notice, no matter who's responsible for it or
14 for the failure to provide it, and then the extent to which
15 the outcome would have been different if appropriate notice
16 had been given?

17 Both Mr. Steinberg and Ms. Rubin, back to you. I
18 haven't forgotten about you, Ms. Rubin. Let's assume that I
19 agree with Mr. Steinberg that it wasn't practical to send
20 out mailed notice to the 70 million or even 27 million car
21 owners for the 19 days that they'd have to object to the 363
22 sale. But isn't it inexcusable for Old GM to have denied
23 people whose cars were subject to recalls notice of the bar
24 date for filing claims?

25 And even if Old GM thereto -- that is, in the bar

1 date context as in the 363 context -- wasn't going to give
2 the 70 million or 27 million people mailed notice, I have
3 some trouble seeing how they could have responded to the bar
4 date notice and filed claims when Old GM still hadn't sent
5 out the recall notices as of the bar date, when at least
6 seemingly, if not apparently, there wasn't the same degree
7 of urgency.

8 Now, both sides -- and here I mean Mr. Weisfelner
9 and Mr. Steinberg -- on remedy, assuming I find violations
10 of due process, I have problems with aspects of each of your
11 positions. Mr. Weisfelner, let's turn first to what you're
12 asking for. I gather -- and I think you said it expressly -
13 - that you're not asking me to vacate the entire sale order.
14 In fact, I gather that you aren't even asking me to vacate
15 it, even in part.

16 It seems to me that you're saying, "Fine, enforce
17 it against everyone else. Just don't enforce it against me,
18 or me and my guys." Is that an unfair characterization of
19 your position?

20 Both sides: finding a due process violation may
21 not by itself require a showing of prejudice. But isn't the
22 prejudice critical to determining whether there's a remedy
23 for it? I'm inclined to agree with Mr. Weisfelner that
24 finding a due process violation does not by itself turn on
25 prejudice, but it seems to me that the remedy for it

1 necessarily must. The issue, it seems to me, is: what
2 should a Court do about the situation when it finds that
3 there's been a violation of due process?

4 And here, I'm going to ask you guys to address
5 when the standards are the same when you have a bipolar
6 dispute, or a modestly polar dispute, which is typical in a
7 (indiscernible) litigation, and when you have a case where
8 hundreds, thousands, or millions of creditors are affected
9 by an order, and a very small subset of the universe of
10 people who were affected by the order want that order blown
11 away or ignored.

12 Mr. Weisfelner, you said in your brief that due
13 process involves the right to be heard, not the right to
14 win. And because you were denied the right to be heard, it
15 seems to me that you're saying you (indiscernible) the right
16 to win. Let's go with that for a minute.

17 If you (indiscernible) the right to be heard,
18 wouldn't the appropriate remedy be a do-over, to give you a
19 chance to make the arguments that you didn't get to make the
20 first time, and then to look at the matter ab initio to see
21 whether the result should be the same or should be
22 different? Because it seems to me that what you're asking
23 for, assuming that you're (indiscernible) due process and
24 you've heard my questions that suggest that -- and I have
25 concerns as to whether you guys were denied due process --

1 you're asking to simply win.

2 Is it speculation or is it totally obvious for me
3 to say now that I wouldn't have denied permission for GM to
4 survive and to conduct its 363 sale so that one group of
5 litigants could get a leg up over another group of
6 litigants? Or I guess I should say one group of creditors
7 should -- could get a leg up on other creditors.

8 And why in the world would I decide the
9 successive liability issue differently today than I did
10 after talking about it for five or 10 or 15 pages in my
11 first opinion, when I considered the arguments made by
12 people like Mr. Jack (indiscernible), who argued the exact
13 same things that you're arguing now after they had
14 (indiscernible) given the appropriate notice?

15 So, what I need you to do, Mr. Weisfelner, is tell
16 me that, if you had been given notice and an opportunity to
17 be heard back in 2009, how would things be different? Are
18 you arguing to me that I would have denied permission for
19 the sale, or that I would have granted a free-and-clear
20 order generally but I would have denied it for your favored
21 group?

22 Or do I properly read from your brief that you
23 would have wanted me to give the sale some kind of
24 conditional approval for your benefit, saying I'd approve it
25 if, but only if, New GM were required to assume your claims?

1 And then, if that's your position, would you please tell me
2 whether there would be some reason for me to grant that
3 protection for people who were claiming that their cars were
4 worthless or that they were inconvenienced, when I denied
5 that relief for people who were injured or killed in actual
6 wrecks?

7 Also, Mr. Weisfelner, let's talk about the exact
8 context of 363 sales, and recognize, as I think we need to,
9 that 363 sales are an extraordinarily important part of the
10 bankruptcy (indiscernible), not just in this case but
11 winning in the other 11s, and that whatever I do, for better
12 or worse, is likely to have precedential effect.

13 How can a judge force a buyer of assets in a 363
14 sale to assume liabilities that it doesn't want to assume?
15 Isn't the only real remedy to deny authority for the sale
16 totally, or to say, were I the judge back in 2009, that,
17 "Yeah, the sale can take place, but I, the judge, won't
18 grant a free-and-clear order at all"?

19 And, if that is the choice that's provided to the
20 judge, how helpful is that to the remainder of the creditor
21 community, the thousands of people that Ms. Rubin
22 represents? And do we want to impose a principle of law
23 that requires judges to frag everyone else with the same
24 grenade?

25 Mr. Steinberg, despite the reservations that I

1 just had expressed, I have some in your direction as well.
2 Before I read the briefs and the underlying cases, I'd
3 started with (indiscernible) stint in bankruptcy, orders and
4 agreements rise and fall as a whole, and that you can't
5 enforce them in part and disregard them in part, or cherry-
6 pick the parts that you like and those that you don't, or,
7 as here, say they're enforceable against most of the world
8 but not against this or that favored class.

9 But your opponents have cited five cases that seem
10 to do exactly that. Three, while they come out of lower
11 courts, one Bankruptcy, two District, involve 363 sales.
12 The other two don't involve 363 sales, but they come from
13 the Second Circuit. And, while one of the Second Circuit
14 cases is only a summary order, which therefore isn't a
15 binding precedent, it's still a Circuit -- Second Circuit
16 opinion. And, frankly, I don't like to disregard anything
17 that comes out of the Second Circuit, that the Second
18 Circuit tells me.

19 So, Mr. Steinberg, I need you to talk about
20 Metzger, the 2006 decision by Arthur Weissbrodt, a
21 bankruptcy judge in San Jose; (indiscernible), the 2007
22 decision by District Judge Mary Cooper in Trenton; and
23 (indiscernible), the 2009 decision by Senior District Judge
24 John Grady in Chicago.

25 And I need you to talk about the Circuit's 2010

1 decision in Johns Manville, Travelers v. Chubb, which I
2 think is sometimes referred to -- I believe this is Manville
3 4; and its 2014 decision in Koepp, K-O-E-P-P, the summary
4 order from a panel that included Judge -- Chief Judge
5 Katzmann and Judges Livingston and Hall.

6 Finally, while it may be trumped by the holdings
7 of those five cases that I talked about, I still need some
8 help on whether I should be looking at this in
9 (indiscernible) of 9024 and 60(b) terms, or whether I should
10 just bypass what those rules say and get to the "You're
11 excused from the order or not" kind of (indiscernible) those
12 other decisions did.

13 But I still want both sides to address whether a
14 judge has to look at it in traditional 60(b) terms and
15 either knock it out or live with it, or the third option,
16 which may or may not be permissible under 60(b) doctrine, of
17 living with it in part and validating it in part.

18 Mr. Weisfelner, you can help me by confirming, if
19 it's true, that you're saying I shouldn't be thinking about
20 invalidating the (indiscernible) or validating the rule but
21 simply refusing to enforce it. But, if that is in fact your
22 position, then help me understand how I can be deciding this
23 without regard to a (indiscernible) bankruptcy procedure in
24 lieu of federal civil procedure. And that would at least
25 seemingly be telling me how I'm supposed to do my job.

1 Finally, folks, in many ways this is the most
2 important of all the things that I want you to talk about,
3 because I think it's the closest question, in an environment
4 where there are already a bunch of close questions. If we
5 had a do-over, and it's my instinct that, when somebody is
6 denied due process, he or she is entitled to a do-over, the
7 result of part of what you guys are arguing would be pretty
8 clear. But part would be highly debatable. And, in each of
9 those two sides, or prongs, one side would have the stronger
10 side and one would have the weaker.

11 If we had a do-over, I think it's quite clear that
12 I'd still grant a free-and-clear order, especially since I
13 heard the same arguments before and I rejected them. And I
14 gave them a lot of thought before I did. But if we had a
15 do-over, I'd likely have to consider whether a free-and-
16 clear order in the form that I just issued it was over-
17 broad. And, in this respect, the economic loss plaintiffs,
18 though not Mr. Weintraub's guys, would have the upper hand.

19 This order, as I read it, not only blocks
20 successor liability, but also blocks claims based on wholly
21 post-sale events that involved Old GM or Old GM parts. This
22 is one of the issues, if not the issue, that bothers me the
23 most. And the issue is whether what I should have done, or
24 would have done if the argument had been made to me then,
25 was to add a new order that was narrower and said that

1 people couldn't sue based on anything Old GM had done, but
2 they could sue if it was based on what New GM had done, so
3 long as Old -- as New GM wasn't blamed for Old GM's acts.

4 And if, as I'm inclined to rule, I find that, if
5 there was a due process violation, the economic loss
6 plaintiffs would be entitled to a do-over, and if I also
7 concluded, as I'm inclined to do, that, if they got a do-
8 over on successor liability, the result would be the same,
9 the issue or the conclusion I'd reach would have been
10 different, given New GM protection for events that it did
11 that were not premised on anything old GM had done. And I
12 need both sides to address that scenario.

13 I have only one real question in (indiscernible),
14 so, even though we may not get to it this afternoon, I'm
15 going to get it out anyway. Mr. Weisfelner, is there a
16 reason that you didn't ask me to stay further distributions
17 to Ms. Rubin's guys, the Old GM creditors, until the issues
18 before me now were sorted out? Am I right in assuming,
19 since you're a pretty competent lawyer, that you didn't
20 overlook that possibility?

21 And can I properly assume that you did it for
22 tactical reasons, because you'd rather get \$100 in a
23 recovery against New GM, as contrasted to the \$0.25 or so
24 that you'd get on the dollar if you had to go against Old GM
25 (indiscernible)?

1 Now, with all of that, let's get to work. And
2 (indiscernible) we hear first from you, Mr. Steinberg?

3 MR. STEINBERG: Yes, your Honor.

4 THE COURT: Come up to the main lectern, please.

5 MR. STEINBERG: Your Honor, good morning. I'm
6 Arthur Steinberg, for the record. I'm here with my
7 colleague, Scott Davidson, and my co-counsel from Kirkland &
8 Ellis, Richard Godfrey and Andrew Bloomer. I want to thank
9 your Honor first of all for accommodating all the lawyers
10 for the rescheduling of this conference.

11 And I'm sure, like my other counsel who will be
12 addressing you today, they're all -- they have a lot of
13 thoughts swirling in their mind as they try to address the
14 multitude of questions that your Honor just went through.
15 But I think I will be able to do it, and I will do it in the
16 order where it was presented itself in the outline.

17 About a year ago, New GM announced a recall with
18 respect to ignition switches in Old GM vehicles. And
19 shortly thereafter, that started a wave of lawsuits that
20 were commenced against New General Motors, seeking purported
21 economic losses regarding vehicles that were subject to the
22 recall.

23 In the early complaints that were filed, which
24 sought primarily monetary compensation for the alleged
25 decrease in value of the vehicles based on the ignition